

REMARKS

The Office Action mailed February 24, 2006, rejected Claims 1-23 under 35 U.S.C. § 112, second paragraph, as being indefinite. In addition, Claims 7-16 and 18-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hull (*Introduction to Futures & Options Markets*) in view of "Disclosed Prior Art" (citing applicant's specification at page 27, lines 1-6). Further, Claims 1-6 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hull in view of Disclosed Prior Art and Rosen (U.S. Patent No. 5,453,601).

Claims 1, 5, 7, 12, 13, 17, and 20-23 have been amended. No claims have been canceled. Claims 24-26 have been added. Claims 1-26 are thus presented for consideration and allowance.

Applicant has carefully considered the comments provided in the Office Action. The claims presented herewith are in allowable condition. Withdrawal of the claim rejections and allowance of the application is requested.

Interview Summary

Prior to discussing the patentability of the claims, the undersigned counsel thanks Examiner Borlinghaus for the time and consideration he extended in a telephonic interview conducted August 21, 2006. The interview, in summary, focused principally on independent Claims 1, 7, and 13, with proposed amendments, as well as Claim 11 and 15, in view of the teachings of Hull and applicant's own disclosure alleged to be prior art. Applicant agreed to submit a formal response, after which the claims would be further considered for allowability.

The Office Action first addressed Claims 1-23 under Section 112. The Office Action then addressed Claims 7-12 and 13-23 under Section 103, followed by Claims 1-6. For ease of examination, applicant will follow the same order when discussing the claims in this response.

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Claims 1-26 Are Definite Within the Meaning of Section 112, Second Paragraph

Claims 1, 7, and 13 have been amended to recite a "short term option" having a term that is "about ten seconds or less." Applicant submits that this phrasing is definite with the meaning of 35 U.S.C. § 112. The phrase "about ten seconds" distinguishes between human response times, which are in the tens of seconds (see page 27, lines 4-6 of the present application) and computer response times which can be less than tens of seconds. An interpretation of "about ten seconds" in the context of the present application is not "insolubly ambiguous," and thus should be considered definite. *Marley Mouldings v. Mikron Industries*, 417 F.3d 1356 (Fed. Cir. 2005), citing *Bancorp Servs. v. Hartford Life Ins.*, 359 F.3d 1367 (Fed. Cir. 2004) ("When a claim 'is not insolubly ambiguous, it is not invalid for indefiniteness"). See also, *Ex parte Eastwood*, 163 USPQ 316 (Bd. App. 1968) (The term "about" used to define the area of the lower end of a mold as between 25 to about 45% of the mold entrance was held to be clear, but flexible), and *W.L. Gore & Assoc. v. Garlock*, 721 F.2d 1540 (Fed. Cir. 1983) (Court held that a limitation defining the stretch rate of a plastic as "exceeding about 10% per second" to be definite).

Applicant requests withdrawal of the rejection of Claims 1-23 under Section 112. Based on their dependency on Claim 7, new Claims 24-26 are also definite under Section 112 and should be allowed.

Claims 7-12 and 24-26 Are Patentable Over The Prior Art

Claim 7 recites as follows:

7. A method of facilitating trading, comprising:
automatically receiving a short term option request from a user, the
term of the option being about ten seconds or less, and
automatically requesting the short term option from a market
process, the market process being a computer program executing on a

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computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes.

Hull discloses conventional options trading in which the options have stated expiration dates (e.g., the third Friday of the month). As taught by Hull, options are purchased by relaying instructions to a human trader on an exchange floor (see page 4), who then finds a trader on the contra-side to complete the trade. In the context of futures trading, Hull notes that some exchanges use a system in which a buyers and sellers sitting at computer terminals may communicate their willingness to trade by pressing appropriate keys on the computer, and the trades are matched by a computer.

Notably however, as discussed with the Examiner in the telephone interview, Hull teaches nothing about a short term option having a term "being about ten seconds or less." Further, nothing in Hull even suggests a short term option as defined in Claim 7.

No other art was cited to reject Claim 7, other than applicant's own specification. To provide context to the portion of the specification cited in the Office Action (italicized below), the complete passage at page 26, line 22 to page 27, line 13, of the present application reads as follows:

Service: Stop Order

Stops, short term option orders, can be provided as an optional feature of an order umpire. The expiration time of a stop may be controlled through platform services to ensure guaranteed execution for a linked order. The expiration time is typically sufficient for a process on system 5 to accomplish an operation on the platform, with present computer processing technology, this time is several hundred milliseconds or less.

FIG. 103 illustrates an example of stop order processing.

Conventional options expire at one of a set of predetermined times in the future, rather than in a short time measured from when they are granted. Recently, the International Securities *Exchange has provided an automated facility for trading these conventional options. So-called "forwards" enable a trader to negotiate the expiration time.*

In conventional human-directed markets, a market maker will often grant a short-term option to a trader, sometimes for a fee and sometimes as a favor. The market maker is exposing himself or herself to arbitrage by the trader, so is reluctant to grant such stops for more than intervals of time measured in tens of seconds. Due to human reaction times, a stop for a duration of one second or less is useless, since a human cannot physically take another trading action in such a short time.

In contrast, system 5 has many mechanisms to ensure appropriate management of small intervals of time despite computer queues and the like. System 5 is also concerned with allowing human behaviors to occur electronically, rather than forcing all trades into the conventional electronic bulletin board paradigm. The fundamental nature of system 5 makes a short-term stop meaningful, whereas in conventional systems it is useless.

The paragraph beginning "Conventional options..." is clearly discussing options of the type taught by Hull that expire at one of a set of predetermined times in the future. Even where applicant indicates that the International Securities Exchange has provided an "automated facility" for trading options, the facility is explicitly described as trading "these conventional

options." The same paragraph discussing conventional options further refers to so-called "forwards" that enable a trader to negotiate the expiration time. Traders may maintain an option position with an expiration time that is rolled forward by buying (or selling) an option with the same strike price but with a different expiration time and close their current option position. In all cases, this paragraph of applicant's disclosure does not present any statements of prior art that teach or suggest "a short term option..., the term of the option being about ten seconds or less" as recited in Claim 7.

The paragraph that follows (beginning "In conventional human-directed markets...") also does not present any statements of prior art that teach or suggest "a short term option..., the term of the option being about ten seconds or less" as recited in Claim 7. Rather, this paragraph continues to refer conventional human-directed markets. Short term options of "about ten seconds or less" are distinguished over the prior art, precisely because human response times in human-directed markets, which are measured in tens of seconds (see page 27, lines 4-6) is longer than computer response times which can be much less. Indeed, due to human reaction times, a short term option having a duration of one second or less may be considered useless, since a human cannot physically take another trading action in such a short time. See page 27, lines 6-8, of the present application.

As discussed in the telephone interview, the present application does not teach short term options in the manner suggested and applied in the Office Action. The "Disclosed Prior Art" at best refers to conventional options and human-directed markets for trading those options. Nothing constituting "prior art" in applicant's disclosure teaches a short term option having a term "being about ten seconds or less."

The Office Action even conceded that "[n]either Hull nor Disclosed Prior Art teach a short term option request for an option term less than about ten seconds." Nevertheless, the

Office Action continued to state it would have been obvious for one of ordinary skill in the art to modify Hull and Disclosed Prior Art to allow for *any* option term. (Emphasis added). Applicant strongly disagrees.

Applicant's disclosure of "so-called 'forwards' [that] enable a trader to negotiate the expiration time" does not support such an assertion. Applicant's disclosure must be taken in context, and as discussed above, it is evident that such "forwards" are dealing with conventional options that have conventional stated expiration times. The expiration time of an option position can be negotiated in the sense of buying and selling appropriate options to obtain the desired expiration time (e.g., by rolling forward a position as discussed above). However, this statement alone does not support a conclusion that a short term option of *any* length is obvious under Section 103(a), particularly where the Patent Office has explicitly conceded that neither Hull nor Disclosed Prior Art teach such a short term option request. Moreover, there is no motivation *in the prior art* to modify Hull and Disclosed Prior Art in the manner suggested in the Office Action.

In the context of the present application as a whole, it is evident that applicant intended to describe and claim something that is new and not obvious in view of the prior art. While applicant noted the state of the art by referring to "conventional options" that are traded in "human-directed markets," applicant then described the nature and utility of short term options, particularly for use in a trading environment where computer processes representing orders interact with computerized market processes to bring about executed trades. In one particular example in the specification, applicant extensively discloses the use of short term options to enable guaranteed execution of a linked order. See page 111, line 8 to page 114, line 3, as well as the discussion of a stop (short term option) order manager at page 33, line 29 to page 35, line 8, and a linked order execution manager at page 35, line 10 to page 36, line 10.

Where neither Hull nor Disclosed Prior Art teaches the claimed elements of "automatically receiving a short term option request from a user, the term of the option being about ten seconds or less" and "automatically requesting the short term option from a market process, the market process being a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes," the rejection of Claim 7 should be withdrawn and the claim allowed.

Claims 8-12 and new Claims 24-26 should also be allowed, both for their dependence on allowable Claim 7, and for the additional subject matter they recite.

For example, Claim 12 recites the method of Claim 7, "wherein the automatically receiving and requesting are performed by a trading process, the trading process being a computer program configured to act as an agent that, when executed, represents an order from the user and interacts with the market process according to the rules of engagement," which is not taught or suggested in the cited art.

New Claim 26, which depends from Claim 12, further recites "wherein the automatically receiving and requesting are performed by multiple trading process that are simultaneously and independently representing multiple orders of the user," which also is not disclosed in the cited art.

New Claims 24 and 25 further recite patentable subject matter. Claim 24 is directed to the method of Claim 7, "wherein the short term option request is automatically received as a result of user trading activity without an explicit request for the short term option from the user," and Claim 25 further states "wherein the short term option request is automatically received as a result of processing a linked order received from the user." Again, these features are not taught or suggested in the cited art and should be allowed.

Claims 13-23 Are Patentable Over The Prior Art

Claim 13 recites as follows:

13. A method of facilitating trading, comprising:
receiving, at a computer program executing on a computer system
and implementing rules of engagement by which information or
merchandise is exchanged between trading process, a request for a short
term option having a term of about ten seconds or less, and
automatically granting the short term option.

As with Claim 7 discussed above, neither Hull nor Disclosed Prior Art teaches "a short term option having a term of about ten seconds or less." Consequently, with respect to Claim 13, the cited art cannot be combined to render obvious the elements of "receiving, at a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading process, a request for a short term option having a term of about ten seconds or less" and "automatically granting the short term option," as claimed. The Section 103(a) rejection of Claim 13 based on Hull and Disclosed Prior Art should be withdrawn and the claim allowed.

Claims 14-23 are also patentable, both for their dependence on patentable Claim 13, and for the additional subject matter they recite. For example, Claim 17 recites the method of Claim 13, wherein the method further comprises "automatically requesting a platform process to instantiate and set a timer to indicate when the short term option has expired and terminate the instance of the timer when the short term option has expired." The Office Action cited Rosen (U.S. Patent No. 5,453,601) in support of its rejection of Claim 17, but Rosen does not provide disclosure that overcomes the deficiencies of Hull and Disclosed Prior Art, as discussed above, nor does Rosen teach the elements claimed in Claim 17. Claims 14-23 should be allowed.

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Claims 1-6 Are Patentable Over The Prior Art

Claim 1 recites as follows:

1. A method of facilitating trading, comprising:
automatically receiving a timer request for a timer to measure the duration of a short term option, wherein the duration of the option is about ten seconds or less, and wherein the request is received from a market process, the market process being a computer program executing on a computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes,
in response to the timer request, automatically instantiating the timer and setting the timer to indicate the short term option expiration time, and
automatically terminating the instance of the timer upon expiration of the short term option.

At page 15 of the Office Action, Claims 1-6 were rejected under Section 103(a) as being unpatentable over Hull in view of Disclosed Prior Art and Rosen (U.S. Patent No. 5,453,601). Rosen was cited for its disclosure of utilizing a timer or clock to indicate an expiration time. Hull and Disclosed Prior Art, even if combined with Rosen, do not disclose "in response to [a] timer request, automatically instantiating the timer and setting the timer to indicate the short term option expiration time" and "automatically terminating the instance of the timer upon expiration of the short term option." Additionally, Hull, Disclosed Prior Art, and Rosen do not teach "automatically receiving a timer request for a timer to measure the duration of a short term option, wherein the duration of the option is about ten seconds or less, and wherein the request is received from a market process, the market process being a computer program executing on a

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computer system and implementing rules of engagement by which information or merchandise is exchanged between trading processes." For these reasons, Claim 1 is patentable over the cited art.

Claims 2-6 are also patentable, for their dependence on patentable Claim 1 and for the additional subject matter they recite. For example, Claim 5 recites the method of Claim 1, "further comprising creating a short term option manager process in response to the timer request, and upon expiration of the short term option, terminating the short term option manager process." These features are not taught or suggested in the cited art. Claims 2-6 should be allowed.

CONCLUSION

Applicant respectfully requests reconsideration and allowance of the present application. Applicant has carefully considered the comments provided in the Office Action and, for the reasons discussed above, submits that the claims are patentable over the cited art. Absent a *prima facie* case of obviousness, Claims 1-26 should be allowed. Action to that end at an early date is requested. Should any issues remain needing resolution prior to allowance, the Examiner is invited to contact the undersigned counsel by telephone.

Respectfully submitted,

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